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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BRANDT STITES,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

HILTON HOTELS CORPORATION et al.,

Real Parties In Interest.

B213360

(Related Appeal B209485)

(Los Angeles County
Super. Ct. No. BC354709)

ORIGINAL PROCEEDING; Petition for writ of mandate. Jerome K. Fields,
Judge. Writ granted.

Stites Law Firm and Aaron Stites for Petitioner.

No appearance for Respondent.

Bryan Cave LLP, Jonathan Solish and Glenn J. Plattner, for Real Parties in
Interest.

* * * * *

Petitioner Brandt Stites seeks a writ of mandate¹ directing the superior court to set aside an order directing settling defendants DKN Hotels, LLC, DKN, LLC and QSSC, LLC to retain in trust settlement monies in the amount of \$14,750.32 pending petitioner's appeal of a judgment which consists solely of costs. Because we conclude the trial court was without jurisdiction to issue the August 11, 2008 order, we grant the petition and direct the court to set aside the orders.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner filed suit against Hilton Hotels Corporation, Hilton Hospitality Inc., Hilton Holdings, Inc., Hilton Hotels U.S.A., Inc., Hilton Insurance Corporation, San Francisco Hilton, Inc., Hilton San Diego Convention Center, LLC, Hilton San Diego Corporation, 90210 Corporation, Promus Hotel Corporation, Promus Operating Company, Inc., Promus Hotels, Inc. and Promus Hotel Accommodations, Inc. (hereafter "Hilton"). Also named as defendants were DKN Hotels, LLC, DKN, LLC and QSSC, LLC.

On February 1, 2008, sanctions in the amount of \$1,500 were imposed against petitioner.

On May 22, 2008, the trial court granted summary judgment against petitioner in favor of Hilton.

On June 16, 2008, the trial court entered a judgment, which provided that Hilton was "awarded costs in the total amount of _____, plus interest to be accrued at the statutory rate of 10% per annum from May 22, 2008." The judgment also provided that "the sanctions award issued . . . against [petitioner] in the amount of \$1,500 on February 1, 2008 is hereby incorporated into the final judgment against [petitioner]."

On June 20, 2008, Hilton filed a memorandum of costs, seeking costs in the amount of \$14,750.32.

¹ We have elected to construe petitioner's petition for writ of supersedeas as a petition for writ of mandate. The number assigned to the petition is B213360.

Sometime prior to July 11, 2008, petitioner reached a settlement with DKN Hotels, DKN, LLC and QSSC, LLC.

On July 11, 2008, Hilton Hotels Corporation filed a document entitled “NOTICE OF LIEN (Attachment—Enforcement of Judgment)” pursuant to Code of Civil Procedure section 708.410.² The notice provided that the lien was based on the June 16, 2008 “money judgment,” and that “[t]he amount required to satisfy the judgment creditor’s money judgment or to secure the amount to be secured by the attachment at the time this notice of lien is filed is \$1,500 plus \$14,750.32 in costs to be added by the Court per [Hilton’s] Cost Bill.”

On July 14, 2008, Hilton filed an ex parte application requesting that “the Court or Clerk immediately enter costs on the judgment” pursuant to California Rules of Court, rule 3.1700(b)(4),³ and that the court “enter an order that any settlement proceeds owed to [petitioner] be paid directly to Hilton, in the amount of the total judgment . . . , plus interest.” Hilton explained that it was fearful petitioner would abscond with the proceeds of the settlement before Hilton could recover its costs and that in order to ensure that Hilton was able to “collect on its judgment,” an order directing payment of the settlement proceeds directly to Hilton was required.

On July 15, 2008, petitioner filed a notice of appeal, appealing the June 16, 2008 judgment entered against him. Later that same day, the trial court granted Hilton’s ex parte request, in part, and entered on the judgment costs in the amount of \$14,750.32. The court set a further hearing as to the validity of Hilton’s lien and “Hilton’s request that the settlement funds be paid to Hilton or remain frozen” for August 11, 2008. DKN Hotels, LLC, DKN, LLC and QSSC, LLC were directed to place \$16,250.32 of the settlement funds in trust pending the August 11, 2008 hearing.

² All further statutory references are to the Code of Civil Procedure.

³ California Rules of Court, rule 3.1700(b)(4) provides that “[a]fter the time has passed for a motion to strike or tax costs or for determination of that motion, the clerk must immediately enter the costs of the judgment.”

On August 11, 2008, the trial court ordered DKN Hotels, LLC, DKN, LLC and QSSC, LLC to “retain in trust the sum of \$14,750.32 of the settlement sum and to place said sum in [a] joint trust account to be maintained by their counsel jointly as the subject of Hilton’s lien until there is a ruling by the Court of Appeal on [petitioner’s] appeal.”⁴ The court, citing *Vadas v. Sosnowski* (1989) 210 Cal.App.3d 471 (*Vadas*), acknowledged that Hilton’s judgment for costs was automatically stayed without bond pending petitioner’s appeal, and that, as a result, Hilton was prohibited from executing on its judgment for costs until petitioner’s appeal was finalized. The court held, however, that “the fact that [Hilton] cannot execute on its judgment for costs, does not [a]ffect this Court’s prior Order restraining [the settling defendants] from paying said sum to [petitioner] and requiring that they hold in trust the amount of Hilton’s costs judgment.”

Petitioner filed a writ petition challenging the August 11, 2008 order. We advised the parties of our intention to issue a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.)

II. ISSUE

The issue presented by this petition is whether the trial court acted in excess of its jurisdiction in issuing the August 11, 2008 order directing the settling defendants to place \$14,750.32 in trust pending petitioner’s appeal.

III. DISCUSSION

Section 916, subdivision (a) provides that “[e]xcept as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.”

⁴ Although unclear, it appears the remainder of the settlement proceeds have been distributed to petitioner.

A defense judgment for costs alone is subject to the automatic statutory stay on appeal provided by section 916, subdivision (a). (*Vadas, supra*, 210 Cal.App3d. at p. 475.)

“The purpose of the automatic stay provision of section 916, subdivision (a) ‘is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.’ [Citation.] [¶] To accomplish this purpose, section 916, subdivision (a) stays all further trial court proceedings ‘upon the matters embraced’ in or ‘affected’ by the appeal. In determining whether a proceeding is embraced in or affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. ‘[W]hether a matter is “embraced” in or “affected” by a judgment [or order] within the meaning of [section 916] depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the “effectiveness” of the appeal.’ [Citation.] ‘If so, the proceedings are stayed; if not, the proceedings are permitted.’ [Citation.] [¶] The fact that the postjudgment or postorder proceedings may render the appeal moot is not, by itself, enough to establish that the proceeding affects the effectiveness of the appeal and should be stayed under section 916. Rather, something more is needed. For example, *the trial court proceeding must directly or indirectly seek to ‘enforce, vacate or modify [the] appealed judgment or order.’* [Citation.] Or the proceeding must substantially interfere with the appellate court’s ability to conduct the appeal. [Citation.]” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189-190, italics added, fn. omitted.)

With these principles in mind, we consider whether the trial court acted in excess of its jurisdiction in issuing the August 11, 2008 orders.

On July 15, 2008, petitioner filed a notice of appeal from the June 16, 2008 judgment. Upon the perfecting of petitioner’s appeal, proceedings in the trial court were automatically stayed pursuant to section 916, subdivision (a). Hilton apparently concedes that this is so, but claims the July 15, and August 11, 2008 orders restraining DKN

Hotels, LLC, DKN, LLC and QSSC, LLC from releasing settlement proceeds to petitioner and directing the settling defendants to withhold \$14,750.32 of petitioner's settlement proceeds to satisfy Hilton's costs judgment lien was permissible because the orders "simply maintained the status quo . . . [because] Hilton filed its Notice of Lien on July 11, 2008, prior to [petitioner's] filing his Notice of Appeal."

In support of this claim, Hilton cites section 708.410, subdivision (a), which provides that "[a] judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action . . . may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following: [¶] (1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding. [¶] (2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding." Hilton also relies on subdivision (d), which provides that "[f]or the purpose of this article, an action . . . is pending until the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal has been finally determined."

Section 708.410 sets forth the procedure for the filing of a judgment lien. We find nothing in the language of the statute authorizing a trial court to issue an order after a lien is filed directing settling defendants to withhold funds in the amount of a costs judgment pending the judgment debtor's appeal.

Section 708.480, provides that "[a] lien created under this article may be enforced by any applicable procedure: [¶] (a) After the judgment subject to the lien is entered and the time for appeal from the judgment has expired. [¶] (b) If an appeal is filed from the judgment subject to the lien, after the appeal is finally determined." In other words, if a lien is filed and no appeal has been filed, the lien may be enforced. Or, if an appeal is filed, and the appeal becomes final, the lien may be enforced.

Here, of course, a notice of appeal was filed. Immediately thereafter an automatic stay pursuant to section 916, subdivision (a) took effect, which barred any trial court proceedings that directly or indirectly sought to enforce the appealed judgment. The subject of the August 11, 2008 trial court proceedings was whether the settling

defendants should be ordered to place \$14,750.32 of the settlement proceeds in trust pending petitioner's appeal. Hilton claims this action on the part of the trial court did not "enforce" the lien because had the lien been enforced, Hilton would now be in possession of the remaining settlement funds. We disagree. The trial court's order directing the retention of settlement funds in trust for Hilton's benefit pending finalization of petitioner's appeal is one step in the enforcement of the judgment and thus barred by the automatic stay provisions of section 916, subdivision (a).

We do not mean to suggest that the filing of a notice of appeal nullifies a *valid* notice of lien.⁵ We merely conclude that "freezing" settlement funds and directing that they be held in trust for the benefit of a *particular* defendant should that defendant prevail in connection with an appeal filed by the plaintiff is an order designed to ensure that monies will be available to satisfy a *particular* lien. Accordingly, it is an order of enforcement.

We therefore conclude that the trial court was without jurisdiction to conduct the August 11, 2008 hearing⁶ and that the order issued thereafter is void. (*Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629 [further trial court proceedings in contravention of a section 916 stay is in excess of the trial court's jurisdiction].)

IV. DISPOSITION

Let a peremptory writ issue directing respondent to vacate the August 11, 2008 order granting Hilton's motion for an order directing DKN Hotels, LLC, DKN, LLC and QSSC, LLC to place settlement monies in the amount of \$14,750.32 in a trust account

⁵ We express no opinion as to the validity of Hilton's lien.

⁶ Although we also conclude that the trial court was without jurisdiction to conduct the July 15, 2008 hearing, it appears the order issued following that hearing was an interim order issued pending the August 11, 2008 hearing. It is therefore unnecessary to direct the trial court to set aside the July 15, 2008 order.

pending finalization of petitioner's appeal. Respondent shall thereafter enter a new and different order denying Hilton's motion. Petitioner to recover costs incurred in connection with this petition.

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_____, P. J.
BOREN

We concur:

_____, J.
DOI TODD

_____, J.
CHAVEZ